IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.998 OF 2001

Santosh AliasGotiram Mansaram Mundavare. ..Appellant
Age 25 years, Occ: Masson,
Residing at Village Usavad,
Taluka: Chandawad, District Nasik.
Vs.
The State of Maharashtra ...Respondent

Mr. Abhaykumar Apte for the Appellant
Mrs. U.V. Kejriwal A.P.P for the State

WITH
CRIMINAL APPEAL NO.722 OF 2001

Prabhakar Mansaram Mundavare ...Appellant
Age 31 years, Occ: Masson,
Residing at Village Usavad,
Taluka: Chandawad, District Nasik.
Vs.
The State of Maharashtra ...Respondent

Mr. C.R. Sonawane for the Appellant
Mrs. U.V. Kejriwal, A.P.P for the State

CORAM : SHRI J.N. PATEL &
SMT. ROSHAN DALVI, JJ.
DATED : 4TH AUGUST, 2006.

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1. Two brothers who have been accused in Sessions Case No. 170 of 2000 have filed the above appeals against their conviction and sentence. The appellant in Criminal Appeal No.998 of 2001 (original accused no.1) has been charged with committing the murder of his wife on 10th July, 2000 at about 12.00 p.m. by pouring kerosene on her person and setting her on fire and lighting a match-stick, punishable under Section 302 of Indian Penal Code as also for subjecting her to physical and mental harassment and cruelty by making unlawful demand of money for purchasing centering material for a period of 6 months prior to the incident i.e. 10th July, 2000 punishable under Section 498 A read with Section 34 of the Indian Penal Code. The second charge is made against the original accused no.2 also (the appellant in Appeal No.722 of 2001). Both of them have been convicted and sentenced as charged. Accused no.1 was in custody pending trial. The accused no.2 was on bail and was taken in custody at the time of judgment.

2. In the trial 16 witnesses were examined. Several

of them turned hostile, some others were partly corroborated. The evidence that has emerged is that the accused no.1 and the deceased his wife Mohana were married for about 5 years. However, they had no issues. The accused used to harass her. The appellant was given interalia a sewing machine which the deceased was using to stich clothes.

3. Because of the harassment, the deceased had written one post-card and one inland letter to her brother and sisters. They have been proved by direct evidence of the recipients and marked Exhibit-41 and 42. The post-card was received on 29th June, 2000. Her brother went to her residence on 5th July, 2000. She complained about harassment to him and wanted him to take her to his house. On 6th July, 2000 the brother went to the police station and reported the matter to the Police Patil. The Police Patil P.W.1 and the Sarpanch P.W.2 visited the residence of the accused and the deceased on 6th July, 2000. The incident took place on 10th July, 2000. The deceased expired on 11th July, 2000 at 11.45 hours due to shock upon receiving 92% burns.

4. The incident of 10th July, 2000 has not been

witnessed by anyone. The husband and the wife were alone in the house. Hence, what the wife has to say is alone to be considered. She was taken to the hospital by her brother-in-law, accused no.2. She has made a statement before the police, which is her first dying declaration, and treated as her complaint recorded by the police. It is marked Exhibit-46 in evidence. Before recording this statement the police had obtained the endorsement of the Doctor P.W.6 at the hospital where she was admitted. Because her left hand thumb was burnt, her right hand thumb impression was taken on her statement Exhibit-46.

5. Thereafter the SEM was called. The SEM, P.W.4 recorded her dying declaration after obtaining the endorsement of the Doctor. P.W.6 again after her second examination. That dying declaration in question and answer form is marked as Exhibit-34.

6. The next day after she expired, the postmortem was conducted. The Doctor P.W.5 has made the P.M. report which is marked Exhibit-19 and issued the death certificate marked Exhibit-20.

7. The prosecution has examined Police Patil and a

Sarpanch, whom the brother of the deceased had met for complainant about the harassment meted out to her and who had attended her residence to meet the deceased and her husband. The prosecution has examined two neighbours who are also husband and wife as P.W.3 and P.W.7. All these witnesses have turned partly hostile. They have deposed that there was no ill treatment that they had seen. Yet the fact remains that the Police Patil and the Sarpanch had visited her a mere 4 days before her death. Similarly the neighbours deposed about the lack of any ill treatment but agreed that they had visited them. The cross examination of P.W.7 on behalf of the accused is interesting. She has deposed that the deceased had no issue and that because she wanted to live separately and her husband was not listening to her and as she was having no issue **"**she was mentally disturbed a bit**"**. This shows her marital position. This is a pointer to the fact that the accused ill treated her and it was reason for him to set her ablaze.

8. The post-card and the letter written by her to her brother and sisters P.W.12,13 and 14 marked Exhibits-41 and 42 upon their direct evidence of

receipt and identification of her handwriting clearly make out a case of harassment. She has mentioned therein that the accused no.2 used to abuse her and that he had beaten her in the gully. She had also mentioned that she was ill treated by her husband. She entreated them to take her away at Rakshabandhan time and to tell her mother about the state of affairs. The post-card was received barely a fortnight before her death. The evidence has shown that pursuant to the Appellant's demands, a sewing machine was given to her by her brother. The fact that she had no issues has to be borne in mind. This entire evidence as a whole is a pointer to the case of cruelty, specially for the woman who has met with her death soon thereafter. There is nothing else for her to say and describe.

9. The specific incident of 10th July, 2000 has been brought out by her. The first statement is to the police and the second to the SEM. Both are consistent.

10. It is her statement that after about mid-day her husband came home drunk. He poured kerosene on her body and set her ablaze by throwing match-stick

on her. She ran into the gully. Neighbours extinguished the fire by wrapping her in a blanket. Her evidence is not exaggerated. Her statement shows that because her face was in flames she could not see precisely which neighbour helped her.

11. She was taken to the hospital by her brother-in-law. Hence, the husband is conspicuously absent at the time of extinguishing fire as also at the time of admission to the hospital. Yet he has also suffered burns. He has admitted in question No.59 of his 313 statement that his hands were burnt.

12. The spot panchanama Exhibit-28 interalia shows a half burnt shirt showing the sleeves as well as the front portion burnt. It also shows a green polyester saree half burnt, a green blouse with half burnt sleeves, half burnt petticoat stuck to the saree. It shows kerosene poured on the ground and smell of kerosene in the room. A gas cylinder and a stove are shown to be in good condition as also one sewing machine. 5" away from the stove is a black 5 liter plastic can of kerosene without a cap having half liter kerosene in it. A match-box wet with kerosene was seen on the ground. The panchas P.W.8 and 9

have deposed about all these items except the plastic can of kerosene and the gas stove. However, they are partly hostile. Their part evidence shows recovery of various articles under the spot panchanama.

13. The evidence of the two Doctors is the most important corroborative medical evidence. P.W.6 was the Doctor on duty in Rural Hospital, Chandwad as Medical Officer on 10th July, 2000. Upon a requisition received from Chandwad Police Station he examined the deceased. He has deposed that she was in a position to talk, conscious and well oriented and able to give statement. He accordingly gave his endorsement of her condition on which the police recorded her statement. The endorsement is at Exhibit-23 and the statement is marked Exhibit-46 on the same paper. The statement sets out the aforesaid case of the deceased which is treated as the FIR by P.W.15, the I.O. P.W.6 the Doctor has produced the case papers which show history of burns given by the patient. It is important to note that the husband, accused no.1 did not even admit his wife to the hospital. He has not given her history. The patient gave history of homicidal burns

by her husband. The examination of the patient showed burns over her face, chest, abdomen, both thighs, legs and hands up to palm and her pertinium area and her entire back. The endorsement is made about information to police as well as the Tahsildar and her relatives. The burns are shown to be 90%. Her examination shows that the patient was conscious and well oriented. Another endorsement in the medical papers shows that a responsible person from the Tahasildar office was not available and so the Police Constable asked to take her statement. The treatment given to her by way of I.V. fluids is also mentioned in the medical case papers marked Exhibit-25.

14. The Doctor's evidence clearly shows the patient's condition. The Police officer who recorded her FIR, which is her first dying declaration, has therefore performed his duty correctly. The endorsement of the Doctor Exhibit-23 makes this position very clear. The incident stated by her to the police is clearly brought out. The thumb impression of her right hand has been correctly obtained. It is important to note that the medical case papers show that both her hands were burnt up to the palm, hence she was in a

position to thumb impress her statement/dying declaration to the police.

15. On the next day the SEM has recorded her second dying declaration which is fully consistent with her first dying declaration and marked Exhibit-34. The evidence of the SEM P.W.11 sets out what he asked her and what she answered. This dying declaration was recorded on 10th July, 2000 at 6.00 p.m. The SEM obtained the report of another Doctor Vanare who examined the patient and certified her consciousness and ability to give her statement and signed the endorsement at 6.10 p.m. The SEM finished recording her dying declaration at 6.30 p.m which is marked Exhibit-34. Since her left hand was burnt, he also obtained her right hand thumb impression thereon.

16. The two consistent dying declarations of the deceased make out a complete case against accused no.1. Her statement is completely corroborated by the medical evidence.

17. Further the Doctor, P.W.5 made her PM report Exhibit-19 and gave her death certificate Exhibit-20.

The PM report shows 92% burns suffered by her. It shows superficial deep burns present all over body, reddish in colour. The cause of death is shock due to 92% burns.

18. The learned trial Judge has gone through the entire evidence extensively and minutely. She has considered the evidence of P.W.1. She has considered how the deceased was not at all tutored or influenced in any way. She has considered the case of the accused about the infirmities stated to be in the dying declarations. How her right thumb impression was capable of being obtai9ned is specifically set out. This is because her hands were burnt up to the palm. The date on the dying declaration 10th September, 2000 is an obvious typographical error. Despite the defense case, she has considered that there is not a single suggestion of insanity and that only administration of pain killers would not hamper her consciousness. She has rightly concluded that the dying declaration was properly proved.

19. With regard to the prosecution case of harassment and cruelty the evidence of her brother

P.W.12 and her sisters P.W.13 and 14 is brought out by the prosecution. Their direct evidence is corroborated by her inland letter and post-card received by them and got proved through them. A partly hostile evidence of the Police Patil P.W.1, Sarpanch P.W.2 and the two neighbours P.W.3 and 7 show that something was amiss for the brothers to report the matter to the Police Patil on 6th July, 2000, requiring them to visit the residence of her husband. There would have been no requirement for such visit if all was well. The learned trial Judge has set out various corroborations in their evidence showing that they convinced accused no.1 to treat the deceased properly. Presence of the Sarpanch in the house along with the Police Patil show that it was no ordinary matter and consequently the evidence of the victim's brother is corroborated. Similarly the evidence of her brother P.W.12 that the deceased had come to his house because of ill treatment and was later taken back because her mother-in-law was ill and she was needed to cook food finds support in the evidence of P.W.7, the neighbour, that her husband was sent by the mother of the accused to go to the brother of the deceased to bring back Mohana to her house, her other hostility notwithstanding.

Consequently the fact that she had left her husband's house stands proved by independent corroborative oral evidence also. That much evidence is enough to show the cruelty meted out upon a wife who is no longer available to tell her tale.

20. The evidence of the deceased is that the accused no.2 had beaten her in the gully. That fact is mentioned in her post-card received by the brother, which led to the visit of P.W.1,2,3 and 7 to her residence on 6th July, 2000. That part of her evidence is therefore corroborated by such visit.

21. The prosecution has therefore, proved that charges against both the accused. Both the accused are correctly convicted and sentenced.

22. Accordingly the appeal is dismissed.

23. Accused no.2 has been on bail pending this appeal. He shall be taken in custody to serve out his sentence.

(SMT. ROSHAN DALVI, J.) (SHRI. J.N.PATEL, J.)